

**DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**801 K STREET, MS 19-01, SACRAMENTO, CALIFORNIA 95814 • (916) 322-4027 • WWW.CALRECYCLE.CA.GOV

Date: October 11, 2011

TO: Interested Parties

FROM: Kathy Frevert, Senior Integrated Waste Management Specialist

SUBJECT: **Notice of Changes to Proposed Product Stewardship for Carpet Regulation**

A 15-day public comment period for the proposed regulation ran from September 19, 2011 through October 4, 2011. The California Department of Resources Recycling and Recovery (CalRecycle) staff held a public meeting on September 22, 2011 and a conference call on October 7, 2011 on the proposed regulation. After considering comments received during the 15-day comment period, public meeting, and conference call; CalRecycle staff modified the revised proposed regulation. These proposed revisions to the Product Stewardship for Carpet regulation will add clarity to the existing language where needed. On October 11, 2011 CalRecycle initiates a second additional 15-day comment period for the proposed changes.

A copy of the full text of the regulation as originally proposed with the newly proposed changes clearly indicated is available on Carpet Stewardship rulemaking website at: <http://www.calrecycle.ca.gov/Laws/Rulemaking/Carpet/default.htm> (see documents under the "Notice of Second 15-day Comment Period). Text shown in double underline (addition) and ~~double-strikeout~~ (deletion) depict proposed changes made after the 15-day comment period. Text shown in single underline (addition) and ~~single-strikeout~~ (deletion) depict changes made after the 45-day comment period. CalRecycle staff is only required to respond to comments related to the newly proposed changes to the regulation.

The second 15-day written public comment period for this rulemaking ends at noon October 26, 2011.

Please submit your written comments to:

Fareed Ferhut
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery (CalRecycle)
P.O.Box 4025
Sacramento, CA 95812-4025
FAX: (916) 319-7313
E-mail: carpet@calrecycle.ca.gov

Thank you for your interest and participation in this process.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

PROPOSED PRODUCT STEWARDSHIP FOR CARPET REGULATIONS

TITLE 14: NATURAL RESOURCES
DIVISION 7. DEPARTMENT OF RESOURCES, RECYCLING AND RECOVERY
CHAPTER 11. PRODUCT STEWARDSHIP
ARTICLE 1. PRODUCT STEWARDSHIP FOR CARPETS

Section 18940. Purpose.

The purpose of this Article is to clarify existing statute and establish administrative procedures to efficiently and effectively implement the department’s responsibilities under the law for product stewardship for carpets and to provide a uniform competitive business environment to all carpet manufacturers, retailers, and wholesalers pursuant to §42970 of the Public Resources Code.

Note: Authority cited: Sections 40502 and 42970, Reference: Section 42970, Public Resources Code.

Section 18941. Definitions.

(a) The following definitions shall only apply to this Article and ~~Except~~ as otherwise noted, the definitions of this Article supplement and are governed by the definitions set forth in Chapter 20 (commencing with §42970), Part 3, Division 30 of the Public Resources Code:

(1) "Must" or "shall" means a provision is mandatory.

(2) "May" means a provision is permissive.

(b) "Administrative fee" means payments from the carpet assessment manufacturer or stewardship organization ~~manufacturer or stewardship organization~~ to the department that cover the costs of its administrative, oversight, and enforcement services necessary for manufacturers or stewardship organizations to effectively implement carpet stewardship plans. The administrative fee

- 1 (i) "Rug" means a loose laid (not installed or attached at wall base) soft floor covering
2 manufactured from natural or synthetic fiber, including carpet cut into room or area
3 dimensions, that is not intended to cover the entire floor.
- 4 (j) "Significant or Material Change" means any change in a required element of the
5 carpet stewardship plan or annual report.
- 6 (k) "Synthetic turf" means a primarily outdoor synthetic product manufactured to look
7 like natural grass for use as a sports playing surface and/or alternative to
8 lawns. Synthetic turf is not carpet.
- 9 (l) "Transformation" means incineration, pyrolysis, distillation, or biological conversion
10 other than composting. "Transformation" does not include composting, gasification, or
11 biomass conversion.

12

13 Note: Authority cited: Sections 40502 and 42971, Reference: Sections 40124, 40127,
14 40180, 40191, 40192, 40201, 41780, 42970, 42971, Public Resources Code.

15

16 **Section 18942. Submittals.**

17 (a) A corporate officer, acting on behalf of a manufacturer or stewardship organization,
18 shall register with the department. The registration process shall include, but not be
19 limited to, the following information:

20 (1) Contact information of the corporate officer responsible for submitting
21 stewardship plan and annual report documents to the department and for
22 overseeing carpet stewardship program activities, including, but not limited to:

23 (A) Contact Name

24 (B) Title

25 (C) Name of Company or Stewardship Organization

26 (D) Mailing address and physical address

27 (E) Phone number

28 (F) E-mail address

29 (G) Web address, if applicable

30 (H) Location and custodian of records

1 resubmit a plan or any supplemental information requested by the department when
2 a plan is disapproved or conditionally-approved.

3 (3) ~~(2)~~ Plans shall be updated within 30 days of a significant or material change.

4 (4) ~~(3)~~ The approved stewardship plan shall be a public record, except that
5 financial, production, or sales data reported to the department by a manufacturer or
6 stewardship organization is not a public record under the California Public Records
7 Act, as described in Chapter 3.5 (commencing with §6250) of Division 7 of Title 1 of
8 the Government Code and shall not be open to public inspection. The department
9 may release financial, production, or sales data in summary form only that cannot
10 be attributable to a specific manufacturer.

11 (c) The annual report shall be submitted by a corporate officer acting on behalf of a
12 manufacturer or stewardship organization that is operating a carpet stewardship
13 program under a department-approved stewardship plan.

14 (1) The annual report must be submitted electronically to the department,
15 according to instructions provided by the department. A hard copy, signed by a
16 corporate officer of a manufacturer or stewardship organization under the penalty of
17 perjury, must also be submitted.

18 (2) The information submitted in an annual report shall address the criteria for a
19 finding of compliance per 42976 as outlined in §18944 Annual Report Compliance
20 Criteria and be organized according to this standard outline:

21 (A) Contact Information

22 (B) Executive Summary

23 (C) Scope

24 (D) Program Outline

25 (E) Description of Goals and Activities

26 (F) Market Development

27 (G) Financing Mechanism

28 (H) Education and Outreach

29 (I) Audits

30 Note: Authority cited: Sections 40502, Reference: Sections 42972, 42975, 42976,
31 Public Resources Code.

- 1 (E) Report on source reduction.
- 2 (4) Solid Waste Management Hierarchy. Describe:
 - 3 (A) Proposed measures that will enable the management of post-consumer
 - 4 carpet in a manner consistent with the state’s solid waste management
 - 5 hierarchy pursuant to PRC Section 40051 and demonstrate that over time
 - 6 source reduction, reuse, and recycling will increase, over environmentally
 - 7 safe transformation and land disposal.
 - 8 (B) Management of carpet through source reduction, reuse and recycling must
 - 9 be greater than, and grow at a higher rate than the management of carpet
 - 10 through Carpet As Alternative Fuel, Waste-to-Energy, and incineration and
 - 11 other forms of transformation.
 - 12 (C) This Article does not modify or abrogate in any manner existing provisions
 - 13 of Section 41783 of the Public Resources Code related to transformation
 - 14 that allow jurisdictions to reduce their per-capita disposal rate by no more
 - 15 than 10 percent. ~~Materials sent to transformation facilities must meet the~~
 - 16 ~~requirement of Section 41783(a)(2) of the Public Resources Code~~
 - 17 ~~regarding front end methods or programs to remove all recyclable~~
 - 18 ~~materials from the waste stream prior to transformation to the maximum~~
 - 19 ~~extent feasible.~~
- 20 (5) Collection Systems. Describe the system that will be used to collect and properly
- 21 manage post-consumer carpet. This description must include the following:
 - 22 (A) Type of collection sites used.
 - 23 (B) Types of ~~destinations for~~ reuse and recycling activities, processing and/or
 - 24 disposal by product type.
 - 25 (C) Description of how service providers handling old carpet will be able to
 - 26 readily, accurately, and economically identify the type of carpet polymer to
 - 27 facilitate reuse and recycling, e.g., labeling on the back of carpet, affordable
 - 28 laser detection devices, or other technology.
 - 29 (D) General description of best management practices to be followed by the
 - 30 service providers, including any training that the manufacturer or
 - 31 stewardship organization intends to provide to or require of service

1 (G) Stewardship organization and manufacturers shall allocate revenues and
2 expenditures applicable to this program in accordance with Generally
3 Accepted Accounting Principles.

4 (H) The stewardship plan shall describe how the collection and expenditure of
5 carpet assessment funds shall be kept separate from other activities of the
6 stewardship organization.

7 (8) Education and Outreach. Include education and outreach efforts to consumers,
8 commercial building owners, carpet installers, and retailers to promote their
9 participation in achieving the purposes of the carpet stewardship plan. The
10 description shall include how the outreach and education methods will be used and
11 distributed, and how effectiveness of these activities will be measured. Educational
12 information may include, but is not limited to, signage, written materials, advertising
13 or other promotional materials pursuant to Section 42972 (a) (5).

14 (9) Program Performance Measurement. Describe how attainment of the goals will
15 be measured per §18943(c). Program data shall be collected for purposes of
16 annual report submittal (see §18944 Annual Report Compliance Criteria).

17 Information to be provided includes, but is not limited to:

18 (A) Specific information on the measurement methodology, assumptions,
19 conversion factors, if used, and data sources.

20 (10) Stakeholder Consultations. A manufacturer or stewardship organization that
21 submits a plan shall include a process of consultation with affected stakeholders
22 and consider the existing infrastructure in the development of the plan.

23 Stakeholders may include, but are not limited to, other manufacturers and
24 stewardship organizations, service providers, state and local governments, non-
25 governmental organizations, haulers, demolition or other contractors, recyclers,
26 retailers and wholesalers, installers, and consumers.

27 (11) Audits. Include a process by which the financial activities of the stewardship
28 organization and individual manufacturer that are related to implementation of the
29 stewardship plan will be subject to an independent audit, results of which will be
30 submitted in the manufacturer or stewardship organization's annual report and
31 reviewed by the department.

- 1 plan. A stewardship organization with more than one manufacturer may
2 use average weight.
- 3 2. Amount (pounds) of post-consumer carpet that is available for
4 collection.
- 5 3. Amount (pounds) of carpet source reduced, if measureable.
- 6 4. Amount (pounds) of post-consumer carpet collected, by weight, during
7 the reporting period.
- 8 5. Disposition, that is, amounts reused, recycled, incinerated for energy
9 recovery or disposed of in a landfill; of collected post-consumer carpet,
10 by pounds, during the reporting period.
- 11 6. Describe efforts to increase recyclability of carpets.
- 12 7. Describe efforts to increase recycling of post-consumer carpet.
- 13 8. Describe efforts to increase diversion of post-consumer carpet from
14 landfills.
- 15 9. Describe other environmental impacts as data are available, e.g., green
16 house gas emissions. Descriptions of any enforcement actions or
17 problems related to plan implementation.
- 18 10. Describe efforts to increase the market growth of secondary products
19 made from post-consumer carpet.
- 20 11. Describe number of jobs attributable to the carpet stewardship program
21 as data are available.

22 (B) Information on goals shall be accompanied by supporting information
23 covering, but not be limited to the following topics:

- 24 1. Description of the measurement methodology, assumptions,
25 conversion factors, and data sources.
- 26 2. Data are ~~California-specific~~ to sales in California or post-consumer
27 carpet diverted from California landfills.
- 28 3. Report demonstrates that over time source reduction, reuse, and
29 recycling increased, while environmentally safe transformation and
30 land disposal decreased.

1 (K) An evaluation of the assessment rate

2 (8) Outreach/Education. List educational outreach activities in the stewardship
3 plan. Provide a description of educational materials that were provided to
4 retailers, consumers, carpet removers/installers, contractors, during the
5 reporting period (provide electronic samples). Identify the method used to
6 determine the effectiveness of educational and outreach surveys (e.g.,
7 surveys, hits on specific web pages, number of participants at events, etc).
8 Education and outreach materials may include, but are not limited to, signage,
9 written materials, advertising or other promotional materials pursuant to
10 Section 42972 (a) (5) and Links to website(s) created and maintained by the
11 manufacturer or stewardship organization.

12 (9) Audits. The annual report shall include an independent financial audit
13 funded from the carpet stewardship assessment. The audit shall be
14 conducted in accordance with auditing standards generally accepted in the
15 United States of America, and standards set forth in Government Auditing
16 Standards issued by the Comptroller General of the United States. The audit
17 report shall also include a separate state compliance report on the carpet
18 program requirements as directed by the department.

19 (A) The department may investigate further. If the department decides to
20 further review the findings of the independent auditor, the review will
21 be conducted based on same information the individual manufacturer
22 or stewardship organization provided to the independent auditor.

23 (B) Financial audits must be prepared by a Certified Public Accountant.

24 (C) The department may request supplemental information from the
25 individual manufacturer or stewardship organization during the course
26 of review of a manufacturer- or stewardship organization-submitted
27 financial audit, if necessary.

28 (D) The department will inform the individual manufacturer or the
29 stewardship organization within 60 days of the results of its review.

30 (E) If after conducting further review of the audit, the Department deems it
31 to be necessary, the Department may conduct its own audit.

1 (1) Base Penalty Table I is to be used for stewardship organizations and
2 manufacturers.

3 (A) Identify what violations have occurred.

4 (B) Identify the severity of the violations.

5 (C) Establish the possible range of the base penalty per violation based on the
6 severity levels described in paragraph (b).

7

Base Penalty Table I: For Stewardship Organizations and Manufacturers		
Violation	Description of Violation	Severity
PRC 42972(a)	Failure to submit, individually or through a stewardship organization, a stewardship plan to the Department	Level 3
PRC 42973(b)	Failure to resubmit a stewardship plan within 60 days after receiving a notice of disapproval from the Department	Level 1
<u>14 CCR 18942(b)(2)</u>	<u>Failure to resubmit a stewardship plan within 60 days after receiving a conditional approval from the Department</u>	<u>Level 1</u>
PRC 42973(b)	Failure to obtain Department approval of a stewardship plan	Level 3
PRC 42972(e)	Failure to notify the Department within 30 days after instituting a significant or material change to a Department-approved stewardship plan	Level 2
PRC 42975	Failure to demonstrate to the Department continuous meaningful improvement in the rates of recycling and diversion of postconsumer material subject to a stewardship plan and in meeting the other goals included in an organization's stewardship plan	Level 2
PRC 42976	Failure to submit, individually or through a stewardship organization, an annual report to the Department	Level 3
PRC 42976	Annual report does not contain required elements	Level 2
PRC 42977(a)	Failure to pay an annual administration fee to the Department	Level 3
PRC 42974(b)	Offering a carpet for sale or for promotional purposes that is not subject to a Department-approved stewardship plan	Level 3
PRC 42972(c)(3)(B)	Stewardship assessment is not clearly visible on invoice or functionally equivalent billing document as a separate line item	Level 1
PRC 42972(c)(3)(B)	Invoice or functionally equivalent billing document is not accompanied by a brief description of the stewardship assessment or a Department-approved label	Level 1
14 CCR 18946	Failure to meet record keeping requirements	Level 2

8

9 (2) Base Penalty Table II is to be used for wholesalers and retailers.

10 (A) Identify what violations have occurred.

11 (B) Identify the severity of the violations.

1 **Section 18945.2. Criteria to Impose a Civil Penalty.**

2 In assessing or reviewing the amount of civil penalty imposed for a violation of this
3 chapter, the department or the court shall consider all the following:

- 4 (a) The nature, circumstances, extent, and gravity of the violation(s).
- 5 (b) The number and severity of the violation(s).
- 6 (c) Evidence that the violation was intentional, knowing or negligent.
- 7 (d) The size of the violator.
- 8 (e) History of violation(s) of the same or similar nature.
- 9 (f) The willfulness of the violator's misconduct.
- 10 (g) Whether the violator took good faith measures to comply with this chapter and
11 the period of time over which these measures were taken.
- 12 (h) Evidence of any financial gain resulting from the violation(s).
- 13 (i) The economic effect of the penalty on the violator.
- 14 (j) The deterrent effect that the imposition of the penalty would have on both the
15 violator and the regulated community.
- 16 (k) Any other factor that justice may require.

17 Note: Authority cited: Sections 40502 and 42974, Public Resources Code.

18 Reference: Section 42978, Public Resources Code.

19 **Section 18945.3. Procedure for Imposing Civil Penalties.**

20 (a) Civil penalties may be administratively imposed in accordance with the procedures
21 outlined in the Administrative Procedure Act at Chapter 5 (commencing with Section
22 11500) of Part 1 of Division 3 of Title 2 of the Government Code with the exception of
23 Government Code Section 11505(c).

24 (b) The accusation or complaint and all accompanying documents may be served on
25 the respondent by the following means:

- 26 (1) Personal service.

1 (3) The date(s) the retailer sold or offered the carpet for promotional purposes.

2 (4) Invoices or functionally equivalent billing documents.

3 (5) Certification letter(s) from the department if provided by a manufacturer to
4 demonstrate that carpet from the manufacturer is or was subject to a department-
5 approved stewardship plan.

6 (b) Provide the department with ~~immediate~~ reasonable and timely access, as
7 determined by the department, to its facilities, operations, and any relevant records
8 necessary to determine compliance with this Article, upon request. The records
9 required by this Article shall be accessible for three years.

10 (c) Make all records required by this Article available for inspection or audit by the
11 department, or its agent and other duly authorized regulatory agencies during normal
12 working hours.

13 (d) Submit copies of specified records to the department upon request or at a
14 frequency approved by the department.

15 (e) The department may take disciplinary action against any stewardship organization
16 or manufacturer who fails to provide the department with access pursuant to this
17 subdivision including, but not limited to, imposing penalties and the immediate removal
18 from the department's list of manufacturers that are in compliance with Chapter 20
19 (commencing with Section 42970), Part 3, Division 30 of the Public Resource Code and
20 this Article.

21 Note: Authority cited: Sections 40502 and 42974, Public Resources Code. Reference:
22 Sections 42972, 42972.5, 42973, 42974, 42975, 42976, 42977, 42977.1, 42978, and
23 42981, Public Resources Code.

24

25 **Section 18947. Proprietary, Confidential, or Trade Secret Information.**

26 The public disclosure of records supplied to the department pursuant to this Article that
27 are, at the time of submission, claimed to be proprietary, confidential, or trade secret